

Activity Review

North Carolina State Board of Certified Public Accountant Examiners

1101 Oberlin Road, Suite 104 • PO Box 12827 • Raleigh, NC 27605 • 919-733-4222 • No. 02-2006

Ethics CPE Requirement for Non-Resident Licensees

On September 19, 2005, the North Carolina State Board of CPA Examiners (the Board) conducted a public rule-making hearing to amend the North Carolina Accountancy Rules. One of the rules under consideration for amendment was 21 NCAC 08G .0410, *Professional Ethics and Conduct CPE*.

The amendment to this rule was approved by the Board and at its December meeting, the Rules Review Commission of the North Carolina Office of Administrative Hearings approved the amendment to be effective January 1, 2006.

21 NCAC 08G .0410, *Professional Ethics and Conduct CPE*, as amended (amended text is underlined) effective January 1, 2006, states :

(a) As part of the annual CPE requirement, all active CPAs shall complete CPE on professional ethics and conduct as set out in 21 NCAC 08N. They shall complete either two hours in a group study format or four hours in a self-study format. These courses shall be approved by the Board pursuant to 21 NCAC 08G .0400. This CPE shall be offered by a CPE sponsor registered with the Board pursuant to 21 NCAC 08G .0403(a) or (b).

(b) A non-resident licensee who maintains an office in North Carolina must com-

ply with Paragraph (a) of this Rule. All other non-resident licensees may satisfy Paragraph (a) of this Rule by completing the ethics requirements in the jurisdiction in which he or she resides. If there is no ethics CPE requirement in the jurisdiction where he or she currently resides, he or she must comply with Paragraph (a) of this Rule.

Resident licensees, as well as non-resident licensees who maintain an office in North Carolina, must take a professional ethics and conduct CPE course which has been approved by the Board and which is offered by a Board-approved CPE sponsor, including a NASBA-approved sponsor. A list of Board-approved ethics CPE courses is available on the Board's web site, www.cpaboard.state.nc.us.

A non-resident licensee who does not maintain an office in North Carolina may take a professional ethics and conduct CPE course that has been approved or required by the jurisdiction in which he or she resides and is licensed. Such courses will satisfy the requirement in 21 NCAC 08G .0410.

If you have questions regarding 21 NCAC 08G .0410(b), please contact the Board's Executive Director, Robert N. Brooks, by e-mail at rbrooks@nccpaboard.gov.

Are You Practicing Law?

North Carolina General Statute (NCGS) 93-1(b) prohibits CPAs from engaging in the practice of law unless duly licensed to do so and NCGS 84-2.1 and 4 define what activities constitute the practice of law.

The statutes identify certain specific activities as the practice of law, including the organizing of corporations, the preparation and filing of legal pleadings, the preparation and filing of estate inventories and accountings with the Clerk, and the preparation of wills and trusts.

The North Carolina State Bar has consistently held that the prepara-

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Disciplinary Action

Davin Walter Brown, #16483
Raleigh, NC 12/19/2005

THIS CAUSE coming before the Board at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, at public hearing, with a quorum present, the Board finds, based on the evidence presented at the hearing on December 19, 2005, that:

FINDINGS OF FACT

1. The parties have been properly identified.
2. The Board has jurisdiction over the Respondent and this matter.
3. Respondent received at least fifteen (15) days written Notice of Hearing of this Matter by personal service, certified mail, or other approved personal delivery.
4. Venue is proper and the Noticed Hearing was properly held at 1101 Oberlin Road, Raleigh, North Carolina.
5. Respondent did not file an affidavit of disqualification pursuant to 21 NCAC 8C .0107, 8C .0108 and 8C .0109, or otherwise timely object regarding any Board Member's participation in the Hearing of this Matter.
6. Respondent was present at the Hearing and was not represented by counsel.
7. Respondent was the holder of a certificate as a Certified Public Accountant in North Carolina and is therefore subject to the provisions of Chapter 93 of the North Carolina General Statutes (NCGS) and Title 21, Chapter 8 of the North Carolina Administrative Code (NCAC), including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.
8. In *United States of America v. Davin Walter Brown*, (Case NO. 5:02-CR-263-5-BO3), a judgment of conviction was entered against Respondent upon his plea of guilty to a Criminal Information charging conspiracy to obstruct justice in violation of Title 18, United States Code, Section 1503 and Title 18,

United States Code, Section 371. The plea pertained to Respondent's role as the outside auditor for International Heritage, Inc.

9. According to the Criminal Information to which Respondent pled guilty, Respondent and others "did knowingly and unlawfully combine, conspire, agree, and confederate with each other, to commit an offense against the United States, specifically, corruptly endeavoring to influence, obstruct, and impede the due administration of justice with respect to a matter within the jurisdiction of the Securities and Exchange Commission (SEC), specifically a lawsuit pending between the SEC and International Heritage, Inc. (IHI), *et al.* in the United States District Court for the Northern District of Georgia by, among other things, soliciting, preparing, and causing to be filed materially false and misleading information with the SEC and with the court in said lawsuit, in violation of Title 18, United States Code, Section 1503."

10. The crime to which Respondent pled guilty and was convicted was a felony under the laws of the United States. Additionally, dishonesty, deceit or fraud was an essential element of the crime.

11. On or about November 15, 2005, Respondent was sentenced based upon his guilty plea, and ordered to serve three years probation along with other conditions and requirements.

CONCLUSIONS OF LAW

1. Respondent's conviction as set out above constitutes a violation of NCGS 93-12(9)a and b.

BASED ON THE FOREGOING, the Board orders by a vote of four (4) to three (3) that:

1. The Certified Public Accountant certificate issued to Respondent, Davin Walter Brown, is hereby permanently revoked, effective beginning November 19, 2004.

Exam Simulation Software Version 1.5 Implemented

On February 1, 2006, the AICPA announced that Simulation version 1.5 software would be posted to the AICPA's exam web site, www.cpa-exam.org, in mid-February.

The upgraded simulation software should provide a more seamless, intuitive way for candidates to navigate through simulations and will eliminate any lingering copy/paste issues and will introduce other less dramatic functionality improvements.

Candidates scheduled to test on or after April 1, 2006, should review the version 1.5 Tutorial and Sample Tests.

Candidates scheduled to test in February should review the version 1.0 Tutorial and Sample Tests.

Board Meetings

March 23*

April 24

May 22

June 20*

July 13**

August 21

September 18

October 23

November 20

December 18

Meetings of the Board are open to the public except when, under State law, some portions may be closed to the public.

Unless otherwise noted, meetings are held at the Board office at 1101 Oberlin Road, Suite 104, Raleigh, and begin at 10:00 a.m.

Items to be considered for placement on the agenda must be submitted to Robert N. Brooks at least two weeks prior to the meeting date.

*1:00 p.m.

**Greensboro

Referral Fees Trigger Investment Adviser Licensing Rules

The following article, by Elaine F. Marshall, North Carolina Secretary of State, is published as a courtesy to the Department of the Secretary of State. If you have questions regarding this article, please contact the Securities Division of the Department of the Secretary of State by telephone at 1-800-688-4507 or by e-mail at secdiv@sosnc.com.

Thinking of referring a client to a financial planner? In that case, you need to know that the receipt of payment for the referrals will trigger additional licensing obligations for you. The following scenario explains what can happen:

Jim is a well-respected accountant with his own successful, growing practice. One day he receives a call from Dana, a senior representative of an established financial or investment adviser firm. Dana tells Jim that the firm would like to enter into a business arrangement with him. For every one of Jim's clients who, on Jim's recommendation, agrees to let Dana's company manage his or her assets, Dana's company will pay Jim an ongoing fee, based proportionally on the size of the client's portfolio.

Since the arrangement sounds intriguing, Jim thanks Dana for the overture. Then Jim promises to go through his client list to see if there are any clients that he is not ethically precluded from referring to Dana. During this review, Jim realizes that there are several clients for whom he has not done any recent work. He remembers that they seemed satisfied with his services in the past. Perhaps these sleeper clients could be turned into a revenue source once again. No harm in checking, he thinks to himself, as he begins dialing the first number.

Over the next few weeks, Jim and Dana finalize the terms of their referral agreement. When speaking with his clients, Jim tells them that, in an effort to maximize services to his clients, he has become associated with a company that can offer them investment advice and asset management. He successfully con-

vinces three of his old clients into signing on with Dana's company, and has hopes that a fourth might agree to sign, too. Thereafter, Dana sends Jim a sizeable check for his efforts. Life is good – so far.

However, unbeknownst to Jim, the fourth client, Mary, after reading a newspaper article, decided to call the North Carolina Secretary of State's Securities Division to check out Dana's company. Although Mary is told that Dana's company is properly registered and that there were no complaints on record against it, she learns that neither Jim nor his firm is registered with the North Carolina Secretary of State. From Mary's description of Jim's phone call, one of the North Carolina Secretary of State's Securities Division's Investment Adviser Examiners tells Mary that it appears Jim may be acting as an unregistered investment adviser representative, in violation of the state's Investment Advisers Act [G.S. 78C-1 *et seq.*, enacted in 1988].

Mary's information is passed along to one of the Securities Division's investigators, who begins an investigation. An audit of Dana's firm quickly reveals that the required disclosures about the referral arrangement have not been made to Jim's clients.

The investigator then brings both Jim and Dana in for a meeting. The investigator explains that Jim has failed to register with the State as an "investment adviser representative" and has failed to provide the mandatory disclosure information to his clients. He also explains that Dana's company appears to be in violation of the regulations relating to the firm's duty to supervise its investment adviser representative. Jim inquires about the consequences, so the investigator explains the Investment Advisers Act's provisions for civil damages, civil penalties, and potential criminal penalties for violations. Life is no longer quite so good for Jim, and things have become complicated for Dana's company.

Of course, I have oversimplified this scenario for purposes of illustration. Unfortunately, however, the overall aspects of this scenario are not far from the mark. My office has seen an increase in cases involving well-intentioned accountants, tax preparers, and even attorneys who have become associated with an investment advisory firm without realizing that State law requires "solicitors" like Jim to be registered as "investment adviser representatives," and that the failure to do so can expose these professionals to lawsuits brought by their clients as well as other awkward consequences. Therefore, I invite you to contact the Securities Division (1-800-688-4507) before signing any agreement with an investment advisory firm. We want to help make sure you don't run afoul of the law or risk your reputation, your livelihood, and your career.

In North Carolina, as in most states, any individual who directly or indirectly solicits any client for or refers any client to an investment adviser for a fee or some other benefit is known as a "solicitor," in investment adviser terminology.

The solicitor is subject to the state registration requirements for an "investment adviser representative." For the arrangement to be deemed legal in North Carolina, the investment adviser (which can be either an individual or a company) must be registered with the North Carolina Secretary of State or the Federal Securities and Exchange Commission. In addition, the solicitor cannot have a history of certain disciplinary actions; there must be a written agreement between the solicitor and the investment adviser; and the fee paid to the solicitor must be adequately described in the written agreement. The written agreement must describe the solicitor's activities, his or her compensation, and acknowledge that the solicitor agrees to perform his or her duties consistently with the investment adviser's instructions.

Referral Fees

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Referral Fees

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The solicitor is required to provide the client with a copy of the investment adviser's disclosure statement. The solicitor must also provide the client, at the time of the solicitation for the referral, a separate written disclosure document containing the names of both the solicitor and the investment adviser, the nature of the relationship, a clear statement that the solicitor is being compensated, the terms of the compensation, and the amount the client is paying as a result of the use of a solicitor. In turn, the investment adviser is required to receive and maintain a signed and dated acknowledgment form from each client, stating that the client has received both the investment adviser's disclosure form as well as the solicitor's separate written disclosure.

On occasion, I'm asked why all these regulatory requirements are necessary. Because of the fiduciary status of investment adviser work, state legislators wrote the securities laws to emphasize the importance of protecting the general investing public from unqualified or dishonest financial advisers and investment salesmen. They wanted to ensure there was transparency with regard to solicitations on behalf of investment advisers so that investors would be able to make informed investment decisions. I want to make sure you understand these requirements because the civil administrative penalties for violating these laws can go as high as \$25,000, and willful violations of the Investment Advisers Act may subject the violator to a Class I felony conviction, which could also result in the revocation of your CPA license.

So, if an investment adviser approaches you and tries to get you to refer your clients in exchange for compensation, I urge you to call the Securities Division at 1-800 688-4507 before you agree to take part. Keep in mind that payments for such referrals can be made legally, if done in compliance with the requirements of the North Carolina Investment Advisers Act. For further information, please visit our web site at www.sosnc.com.

Certificates Issued

At its January 23, 2006, meeting, the Board approved the following applications for licensure:

Michael S. Akosi	Lisa L. Koebrich
Juan Donte Alloway	Erin A. Ledoux
April Hudson Andrade	Thomas H. Lewis, VI
Debra A. Antaki	Laura Ann Mancini
Ryan Matthew Barnhart	Robert Wayne McEwan
John A. Beatty, Jr.	Jennifer Lyn Meeks
Isaac William Bigness	Craig M. Menninger
Andrew G. Brock	Christopher Newlin Mitchell
Jason Mitchell Burgin	Camille M. Moeckel
Tammy L. Byars	Karen Eileen Morgan
Claire Denise Cesta	Stephanie Lyn Newberry
Amanda Jane Champion	Sheila B. Ogletree
Elizabeth Chou	Carolyn L. Olivarez
Matthew Vaughn Church	Angela Draughon Packer
Kevin Michael Cielinski	Ashley Arrington Palmer
Steven Allen Clincy	Hemangini R. Parekh
Bruce Seaver Cole	Carol Ann Parrott
Paul Lee Constantino	Michael Robert Potopa
Laurel Anne Crockett	James F. Powderly
Joanna Lee Davison	Lance Ingram Pritchett
Matthew Ryan Decoskey	Richard Urban Puryear
Melanie Suzanne DeMotts	Craig Joseph Ridenour
Jon-Michael Devine	Holly Kennedy Roberts
David H. Dial	Toni Sheray Rogers
William Scott Duvall	Benjamin Andrew Romeiser
Karin Lee Eagle	Mary Rose Romm
Jennifer Kristen Farrand	Nancy Buffington Ross
Torgrim Christopher Forberg	Jason Thomas Sandner
Raymond Edward Halstead	Srikanthi Sanivarapu
Christopher R. Harrison	Karen Jean Schrimper
Katie Lynn Hartzell	Virginia Anne Seippel
Laura Abernathy Hinson	Patricia A. Shanklin
Chong Hyo Hong	Michael John Smith
Gretchen Ann Hooper	Jennifer Beatty Sturgill
Shawana Tennille Hudson	Wilford A. Sutthill, III
David A. Hultz	Kerri Lynn Tadt
Christopher Selden Humphreys	Kathryn Vaughn Teschke
Eric Jeffrey Hyman	Melissa Ann Topper
Walter Glen Ikner	William Nathan Ward
Candace P. Ingle	Chandra Hilton West
Debra JoAnn Jensen	Melissa Jamie Westergard
Belinda Lynn Johnson	Michael William Whiteman
Lori Andrews Johnson	Xinyi "Sunny" Wu
Anton Ray Kamnick	Lu Yang

Practice of Law

continued from front

tion of articles of incorporation and corporate bylaws is the practice of law.

The filing of an initial and ninety-day inventory and accountings for an estate with a Clerk of Court is also considered the practice of law.

However, providing assistance to clients in preparation of the information for estate filings is permissible.

CPAs may file fiduciary, federal estate, and North Carolina inheritance tax returns for an estate although attorneys also provide these services.

According to the statutes, the statutory listing of activities constituting the practice of law is neither exclusive nor exhaustive.

The statutes also prohibit non-lawyers from representing parties in quasi-judicial proceedings.

Accordingly, the State Bar has previously ruled that representing a third party before the regular Tax Review Board constitutes the practice of law as it is expressly defined as a quasi-judicial proceeding.

Although the State Bar has not had an opportunity to consider representation of third parties before the augmented Tax Review Board, the State Bar states that any proceeding at which evidence and legal arguments are presented with a right of appeal to the courts should be considered as quasi-judicial.

21 NCAC 08N .0204 states that CPAs shall not act in a way that would cause them to be disciplined by a federal or state agency or board for violation of law, rules, or ethics.

If you have questions about services you offer or perform that may be considered the practice of law, please contact David Johnson, counsel to the Authorized Practice Committee of the North Carolina State Bar, by telephone at (919) 828-4620 or by e-mail at djohnson@ncbar.com.

www.cpaboard.state.nc.us

On-Line Certificate Renewals Available March 2006



Licensees will soon be able to complete their annual certificate renewals on-line through the Board's web site.

To start the renewal process, a licensee must enter his or her Social Security number and CPA certificate number.

Additional information about the on-line renewal process will be published in the March issue of the *Activity Review*.

New E-Mail Addresses for Board Staff

The Board staff's new e-mail addresses were published in the December 2005 and January 2006 issues of the *Activity Review*.

The new e-mail addresses are also available on the Board's web site, www.cpaboard.state.nc.us.

The Board staff's Bellsouth e-mail addresses have been discontinued and any messages sent to those addresses will be rejected.

Please update your records to reflect the new e-mail addresses.

Reclassifications

Reinstatements

Patricia Lynn Brown	18993
James Leander Buck	26754
Michaela Waldrop Conner	18898
Patricia Bullock Cyrus	14995
Mary Lucile Daly	19669
Laurie Warner Dunlop	19695
Kathleen Marie Gierer	17328
Sidney Robertson Knott, Jr.	25913
Rajeeve Madan	10962
Lynn Ceremuga Peterman	20973
Mariane Bates Williamson	13179
Margaret Teckla Williford	23781

Retired

"Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct or indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA [21 NCAC 08A .0301(b)].

Sherwood Lee Adcock
J. W. Hawkins

Wake Forest, NC
Gastonia, NC

Power-of-Attorney Qualifications Under Scrutiny

If you are a CPA in public practice but are not licensed by the jurisdiction in which you practice, the IRS does not consider you to be “duly qualified” for the purpose of being elected to have a client’s power-of-attorney.

In the conduct of your practice, you may need to have the power-of-attorney to serve your client’s needs for a variety of reasons, such as speaking for your client in the event of an audit, a notice or tax levy, or a negotiation with the IRS.

In providing this service on the client’s behalf, you may routinely prepare and file IRS Form 2848, *Power-of-Attorney and Declaration of Representative*, which is designed to authorize you to represent an individual before the IRS.

IRS Form 2848, Part II, *Declaration of Representative*, requires that for a CPA to hold power-of-attorney for a client, he or she must be “duly qualified to practice as a certified public accountant,” and this qualification is coming under increasing scrutiny from the IRS.

In the event that the IRS discovers that Form 2848 has been signed by a CPA who is not registered and/or licensed in his or her jurisdiction of practice, the IRS will not honor the request for power-of-attorney.

Having this form rejected by the IRS could put your practice in jeopardy through possible malpractice suits and potential ethics investigations by federal and state regulatory bodies.

If you have not registered and paid state licensing fees and you do not automatically fall under another qualifying category on Form 2848 (such as being an attorney), you are not duly qualified to assume a client’s power-of-attorney.

“In my opinion, for administrative purposes, you are not in compliance with the IRS and state law unless you are registered and your licensure fees are current,” said Martin Kenney, Assistant Special Agent in Charge, U.S. Treasury Department Inspector General for Tax Administration.

Kenny said that there have been instances recently of the IRS verifying the licensure status of CPAs who file Form 2848.

Additionally, the IRS requires that CPAs filing for power-of-attorney must be in good standing ethically and be current on continuing professional education (CPE) requirements.

“The standards further require not only that you be a CPA, but that you also are registered, in good standing, up to date in CPE, and have no ethics violations,” Kenney said.

One alternative to this requirement is to represent yourself as an unenrolled return preparer, but such a designation limits you to representing a taxpayer only with regard to a tax liability arising from a tax return prepared by you.

The unenrolled return preparer is limited to practicing or acting as the taxpayer’s representative before examining officers of the compliance function in cases where the designated representative actually prepared the tax forms in question.

Additionally, an unenrolled preparer may not represent a taxpayer before other offices of the IRS, such as Collection or Appeals and the Automated Collection System unit; execute closing agreements; extend the statutory period for tax assessments or collection of tax; execute waivers; execute claims for refund, or receive refund checks. These functions are some of the most common for a CPA to perform on behalf of a client.

The issue of whether or not a CPA is “in the practice of public accounting” often surfaces regarding unregistered CPAs.

However, a *prima facie* case can be made that if a CPA is filing IRS Form 2848, it is on behalf of a client, and therefore the CPA necessarily is engaged in the practice of public accounting.

In order to ensure that you are duly qualified to file for a client’s power-of-attorney, you should be registered and licensed at the state level, and you should make certain that your CPE requirements are up to date.

For additional information, visit the IRS website, www.irs.gov, and review Publication 947, *Practice Before the IRS and Power of Attorney*.

In Memoriam

Dr. Harold Q. Langenderfer

Dr. Harold Quentin Langenderfer, 80, a former member of the State Board of CPA Examiners, died January 6, 2006, of complications from lymphoma.

Langenderfer served on the Board from 1968-1972 and was elected Vice President of the Board. He also served as the Board’s educational consultant for many years.

He graduated from the University of Miami (Ohio) with a bachelor’s degree in accounting and received a Master’s of Business Administration from Northwestern University.

After serving in the US Army, Langenderfer received a doctorate in business from Indiana University.

In 1953, Langenderfer joined the faculty of the University of North Carolina at Chapel Hill (UNC-CH) and was licensed as a North Carolina CPA in 1955.

Langenderfer, who remained a member of the UNC-CH faculty for 40 years, was named the Peat Marwick Mitchell (now KPMG) Chaired Professor of Accounting in the early 1970s, a position he held until his retirement in 1993.

He was an active member of a number of local, state, and national accounting-related organizations including the NCACPA, AICPA, and the American Accounting Association (AAA).

Langenderfer served the NCACPA as president and was chair of the NCACPA Foundation Board of Directors.

In 1986, Langenderfer received an Outstanding Educator Award from the NCACPA Foundation and then received the Distinguished Achievement in Accounting Education Award from the AICPA.

The author of numerous accounting and ethics articles as well as accounting textbooks, Langenderfer is survived by his wife, a daughter, three sons, and five grandchildren.

Memorial contributions may be made to the Reynolds-Langenderfer Scholarship Fund at the Kenan-Flagler School of Business at UNC-CH, CB3490 McColl Building, Chapel Hill, NC 27599.

Disciplinary Action

Charles Gregory Porter, #14605
Porter & Company, P.C.
Certified Public Accountants
Greensboro, NC 01/23/2006

THIS CAUSE, coming before the Board at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to NCGS 150B-41, the Board and Respondent stipulate the following Findings:

1. Respondent Charles Gregory Porter (hereinafter "Respondent Porter") is the holder of a certificate as a Certified Public Accountant in North Carolina.

2. Respondent Porter & Company, P.C. Certified Public Accountants (hereinafter "Respondent firm") is a licensed certified public accounting professional corporation in North Carolina. Respondent Porter is the president and was the sole shareholder of Respondent firm from sometime in 2001 until about October of 2005.

3. Respondent Porter signed and filed the 2002, 2003, and 2004 firm renewals for Respondent firm noting Respondent Porter as the only shareholder.

4. On November 15, 2004, Respondent Porter signed and dated, on behalf of Respondent firm, the "2005 Renewal Form for Professional Corporations" (renewal form) which was initially received by the Board on December 28, 2004.

5. On the renewal form, Respondents only listed one shareholder in the Respondent firm.

6. Rule 21 NCAC 8N.0307 states that any CPA firm using "and Company" or "certified public accountants" in its name must have two or more shareholders. Therefore, Board staff could not process the renewal form as submitted and returned the renewal form to Respondents.

7. On January 26, 2005, Board staff left a telephone message with Respondents reminding Respondents that a revised renewal form had not been received by the Board and that the filing deadline was January 31, 2005.

8. On February 2, 2005, the Board received the Respondent firm's renewal form postmarked on February 1, 2005, with a letter from Respondent Porter stating that Respondent firm would like to continue operating under the firm name Porter & Company, P.C. Certified Public Accountants and would be "issuing shares in 2005 to other owners."

9. On February 4, 2005, Board staff e-mailed Respondents that on or before February 28, 2005, Respondent firm must "either submit name change paperwork or sell stock to another properly-licensed CPA."

10. On February 4, 2005, Respondents e-mailed Board staff requesting the statute or rule cites requiring "a professional corporation to change its name once it has been properly established under the laws and rules in effect at the time."

11. On February 4, 2005, Board staff provided, by e-mail, Respondents with the requested rule cites.

12. Board staff sent a letter, on March 9, 2005, by certified/return receipt mail to Respondents at the last known mailing address for Respondent firm notifying Respondents that, since Respondents had not properly renewed the registration for Respondent firm and since the Secretary of State had suspended Respondent firm's Articles of Incorporation in December of 2003, Respondents "must cease doing business through this corporation or using its name effective immediately." Respondents subsequently rectified the Secretary of State suspension and provided evidence that suspension had been issued in error.

13. On October 13, 2005, Respondents confirmed the issuance of ten (10) shares of corporate stock to another CPA, "effective January 1, 2005."

14. Respondents contend that they did not willfully violate the accountancy laws and rules, and that their use of the name was permitted under N.C. Gen. Stat. § 55B-5, but in lieu of contested case proceedings, wish to resolve this matter

by consent and agree that the Board staff and counsel may discuss this Order with the Board *ex parte*, whether or not the Board accepts this Order as written.

BASED UPON THE FOREGOING, the Board makes the following Conclusions of Law:

1. Respondent Porter and Respondent firm are subject to the provisions of Chapter 93 and 55B of the North Carolina General Statutes (NCGS) and Title 21, Chapter 8 of the North Carolina Administrative Code (NCAC), including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.

2. Respondents' continued uses of the terms "and Company" or "Certified Public Accountants" when there was only one shareholder in the firm constituted violations of NCGS 93-12 (9) e and 21 NCAC 8N .0307(b).

BASED ON THE FOREGOING and in lieu of further proceedings under 21 NCAC Chapter 8C, the Board and Respondent agree to the following Order:

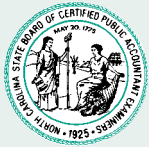
1. Respondent's certificate is suspended for thirty (30) days; however, said suspension is stayed.

2. Respondent shall pay a one thousand dollar (\$1,000.00) civil penalty to be remitted with this signed Order.

3. Within one hundred eighty (180) days of the date this Order is approved by the Board, Respondent must complete and provide verification of his completion of the Ethics Principles and Professional Responsibilities course as offered by the North Carolina Association of Certified Public Accountants. Said course may not be used to meet Respondent's annual forty (40) hour continuing professional education requirement.

IRS Form W-9

A copy of the Board's IRS W-9 form is available on the Board's web site under "Administrative Services," or "Forms."



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20,000 copies of this document were printed for this agency at a cost of \$2,898.88 or approximately 14.5¢ per copy in February 2006.

Notice of Address Change

Certificate Holder _____
Last name Jr./III First Middle
Certificate No. _____ Send Mail to ____ Home ____ Business
New Home Address _____
City _____ State _____ Zip _____
CPA Firm/Business Name _____
New Bus. Address _____
City _____ State _____ Zip _____
Telephone: Bus. () _____ Home () _____
Bus. fax () _____ E-mail Address _____
Signature _____ Date _____

**Mail to: NC State Board of
CPA Examiners
PO Box 12827
Raleigh, NC 27605-2827**

Fax to: 919-733-4209

Certificate holders not notifying the Board in writing within 30 days of any change in address or business location may be subject to disciplinary action under 21 NCAC 8F .0107.